

REMARKS

Restriction Response

The restriction of the application into Group I (Claims 1-16, drawn to a pouch) and Group II (Claims 17-21, drawn to a method of making a pouch) is hereby acknowledged. Group I, with claims 1-16, is hereby provisionally elected, with traverse. If the restriction requirement is not removed as a result of the comments below, it is respectfully requested that the claims of Group I proceed to examination on the merits.

Arguments

All of the claims of this application should be examined together because Groups I and II are directed towards the same subject matter and there would be no additional burden in performing a search on both groups.

It is asserted in the Action that the inventions are independent or distinct because the pouch of Group I can be made by methods other than that recited in Group II. As an example, the Action mentions that the edges of the pouch recited in Group I may be sealed by other means than the heated jaws recited in the claims of Group II. It is respectfully submitted that the method of Group II would necessarily produce the pouch of Group I (see e.g. claims 13 and 17). Thus, Group II is neither independent nor distinct from Group I.

To be sure, one need only look to the similarities of claims 13 and 17 to see that both groups are commensurate in scope. Claim 17 recites a method of making a heat sealed pouch with an expandable polymer located between two pouch panel layers. The front and back panels are placed together in sealing jaws and then heat sealed together and the expandable polymer is activated. The end result of the method of claim 17 is a pouch having front and back panels, sealed together with an expandable polymer layer, in an expanded state, located therebetween. It is not coincidental that this structure is recited, almost verbatim, in claim 13.

Restriction of claims is proper only if the inventions are independent or distinct, and the search of the claims would impose a serious burden on the Examiner. If the search can be made without serious burden, then the claims must be examined together even though they may define independent or distinct inventions. MPEP 803. Given the similar scopes of the classified groups, no additional search burden exists for the present application.

Moreover, the mere fact that the pouch of Group I may be sealed by means other than heated jaws is not controlling on whether the claims are independent or distinct. Simply stated, if the logic of the Action were followed and claim 17 was *broadened*, by removing the limitation of sealing the panels together using heated jaws, the grounds for the restriction requirement would be non-existent. As such, this additional limitation of sealing the pouch panels together using sealing jaws does not take the Group II claims outside of the scope of the Group I claims, rather it narrows the space within Group I that the Group II claims occupy.

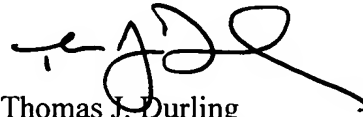
Because the scope of the Group II claims fits within that of the Group I claims, the groups are neither independent nor distinct. Furthermore, no additional search burden is presented because the subject matter of Group II will necessarily have to be reviewed during a search for Group I. For these reasons, it is respectfully submitted that the restriction requirement should be withdrawn.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that claims 1-21 are in condition to proceed to examination on the merits. Prompt action towards that end is respectfully requested.

If minor amendments to the claims are otherwise desired by the Examiner in order to place this application in condition for allowance, please contact Applicants' representative by phone.

Respectfully submitted,



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